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6 IN THE UNITED STATES DISTRICT COURT

7 DISTRICT OF ALASKA

8
9 Sally C. Purser,)
10 Plaintiff,) DEFENDANT JOSEF BOEHM'S
11 v.) OPPOSITION TO PLAINTIFF'S MOTION
12 Josef F. Boehm, Allen K.) TO FREEZE ASSETS
Bolling, and Bambi Tyree,)
13 Defendants.)
14)
15)
16)

CASE NO.: A05-0085 (JKS)

17 **1. PLAINTIFF MISTAKENLY RELIES ON THE ORDER GRANTING PARTIAL**
18 **SUMMARY JUDGMENT AS THE BASIS FOR HER REQUESTED RELIEF**

19 Plaintiff argues that she will prevail on the merits of this
20 action because summary judgment on the issue of liability has been
21 decided. Plaintiff's reliance on the present Order is mistaken. The
22 motion has never been litigated on its merits. Defendant has since
23 filed a motion to set aside the Court's Order granting partial summary
24 judgment pursuant to Fed.R.Civ.Pro. 6(b)(2).

25 This Court's Order granting partial summary judgment is solely
26 procedural and derives from (1) defense counsel's medical emergency
27 prohibiting a timely filing, (2) plaintiff counsel's late filing of
28 a stipulation to extend the time for response, and (3) a mistaken

1 belief amongst both plaintiff and defendant's counsel that local rules
2 allowed for a stipulation to extend the time period in which to
3 respond.

4 It is anticipated that this Court will find good cause set to
5 aside its prior Order and allow the summary judgment motion to be
6 decided on the merits.

7 **2. PLAINTIFF HAS NOT MET THE REQUIRED BURDEN OF PROOF**

8
9 Plaintiff's motion primarily focuses on this Court's right to
10 grant preliminary injunctive relief. The issue is not whether the
11 Court has the *ability* to grant a preliminary injunction, but whether
12 the plaintiff has successfully met all the required elements to gain
13 such relief.

14 Plaintiff concludes that "In the instant case, plaintiff will
15 prevail on final judgment", and therefore, she is entitled to the
16 requested relief. *Plaintiff's Motion*, Page 4. Plaintiff fails to
17 provide the court with any rational to support, (1) the required
18 degree of irreparable harm, (2) the required showing of a probability
19 of success, and (3) that the balance of hardships in her favor.
20 Without the aforementioned, the motion fails.

21 **A. Plaintiff's Burden**

22
23 The plaintiff must demonstrate either (1) a combination of
24 probable success on the merits and the possibility of irreparable
25 injury or (2) the existence of serious questions going to the merits
26 and that the balance of hardships tips sharply in her favor.
27 *Department of Parks and Recreation for State of California v. Bazaar*
28 *Del Mundo Inc.*, 448 F.3d 1118, 1123 (9th Cir. 2006); *Sardi's Restaurant*

1 Corp. v. Sardie, 755 F.2d 719, 723 (9th Cir. 1985); and Arcamuzi v.
2 Cont'l Air Lines, Inc., 819 F.2d 935, 937 (9th Cir. 1987). The
3 Plaintiff completely omitted this analysis from her motion.

4
5 **B. Plaintiff Has Not Demonstrated a Probability of**
6 **Success on the Merits**

7 Without any evidence or argument, the Plaintiff states "plaintiff
8 will prevail on final judgment." *Plaintiff's Motion*, Page 4. The
9 Plaintiff goes on to state that "Indeed, an order granting summary
10 judgment on liability has already been entered and there can be no
11 doubt that plaintiff will prevail on the merits. The only question
12 is not whether plaintiff is entitled to damages; rather the question
13 is the amount of damages to be awarded." *Id.*

14 Plaintiff fails to offer any oral or documentary evidence in
15 which to support any of the allegations set forth in her amended
16 complaint. Plaintiff ignores the extensive need for discovery on the
17 issues of liability and damages.

18 Instead, Plaintiff detrimentally relies on the motion for summary
19 judgment to prove a high probability of success on the merits.
20 Although initially granted for procedural reasons (defendant's failure
21 to timely respond due to the health of counsel David E. Kenner), it is
22 anticipated that summary judgment will be set aside leaving plaintiff
23 devoid of any argument for probability of success.

24
25 **C. Plaintiff Fails To Show a Significant Threat of Irreparable**
26 **Injury**

27 Plaintiff's required degree of irreparable harm is much higher
28 because probability of success and irreparable harm are inversely

1 related. In other words, if the plaintiff has a low probability of
2 success, then she is held to a high standard of proving irreparable
3 harm. See *Oakland Tribune, Inc. v. Chronicle Publishing Co.*, 762
4 F.2d 1374, 1376 (9th Cir. 1985).

5 Mr. Jones' rendition of his conversation with defendant's counsel
6 Brett A. Greenfield is factually incorrect. Plaintiff relies on this
7 conversation as the sole basis in which to argue the threat of
8 irreparable harm. The conversations in question are addressed as
9 follows:

10 ii. August 30, 2006 Telephone Conversation
11

12 On August 30, 2006, defendant's counsel Brett A. Greenfield
13 telephoned plaintiff's counsel Daryl Jones to inquire about the
14 upcoming procedural deadlines and need for a general continuance of
15 all dates due to the extenuating circumstances caused by the emergency
16 health problems of lead counsel David E. Kenner. See *declaration of*
17 *Brett A. Greenfield*, attached hereto and incorporated herein, page 1,
18 paragraph 2.

19 Mr. Jones responded to Mr. Greenfield's request by
20 communicating the need to speak with plaintiff. Mr. Jones additionally
21 inquired about the possibility of engaging in settlement negotiations
22 in the Los Angeles area. Mr. Jones had inquired about settlement with
23 Mr. Greenfield on two prior occasions and indicated that he could use
24 the excuse to travel to Las Vegas, Nevada. Mr. Greenfield represented
25 the need to speak with Mr. Kenner and defendant as he had in response
26 to the two prior requests. See *declaration of Brett A. Greenfield* page
27 1, paragraph 3.
28

1 (ii) August ,2006 Telephone Conversation

2 On August 31, 2006, defendant's counsel Brett A. Greenfield
3 telephoned plaintiff's counsel Daryl Jones to followup on the request
4 for a general continuance. Mr. Jones denied Mr. Greenfield's request.
5 *See declaration of Brett A. Greenfield page 2, paragraph 5.*

6 Mr. Jones again inquired about engaging in settlement discussions
7 in Los Angeles. Additionally, Mr. Jones boasted about his perceived
8 understanding of defendants' financial status. Mr. Jones went on to
9 represent the ease in which he felt he could collect a potential
10 judgment. Mr. Greenfield could neither confirm nor deny Mr. Jones'
11 statements as he had yet to speak with or meet defendant. Mr.
12 Greenfield acknowledged Mr. Jones' statement that receiving settlement
13 money is easier than collection work. *See declaration of Brett A.*
14 *Greenfield page 2, paragraphs 6-9.*

16 Plaintiff fails to provide any evidence in which to prove that
17 defendant has attempted to (1) transfer any of his assets, (2) deplete
18 any of his assets, (3) encumber any of his assets, or (4) dissipate
19 any of his assets.

20 Plaintiff's motion fails to show any threat of irreparable injury
21 and must be denied.

22 **3. CONCLUSION**

23 For the foregoing reason defendant respectfully requests that
24 this Court deny Plaintiff's motion in its entirety.
25
26
27
28

September 23, 2006

KENNER LAW FIRM, P.C.

By:



David E. Kenner,
Attorney for Defendant Josef F. Boehm

September 23, 2006

KENNER LAW FIRM, P.C.

By:



Brett A. Greenfield,
Attorney for Defendant Josef F. Boehm

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4 Attorney for Josef F. Boehm
5

6 IN THE UNITED STATES DISTRICT COURT DISTRICT OF ALASKA

7 Salley C. Purser,) CASE NO.: A05-0085
8)
9 Plaintiff,) CERTIFICATE OF SERVICE
10 v.) DATE: August 28, 2006
11 Joeseef F. Boehm, Allen K.) TIME: 8:30 a.m.
Bolling, Leslie J. Williams, Jr.)
12 and Bambi Tyree,)
13 Defendants.)
14

15 This is to Certify that on or about September 25, 2006 a true
16 and correct copy of the attached documents were caused to be mailed
17 to the following parties of record:

18
19 Bambi Tyree
Inmate No: 13016-006
20 FCI Dublin
5701 8th Street-Camp Parks
21 Dublin, CA 94568
C.M. No.: 7002 2410 0006 6742 2539


22 Allen K. Bolling
23 Inmate No: 14911-006
USP Terre Haute
24 U.S. Penitentiary
P.O. Box 12015
25 Terre Haute, IN 47801
C.M. 7002 2410 0006 6742 2188
26
27
28

1 The following parties were served electronically on September 25,
2 2006:

3 **Darryl L. Jones**
4 lodj.federalnotices@yahoo.com

5
6 **Mary L. Pate**
7 mary.pate@egpalaska.com

8
9
10
11 KENNER LAW FIRM, P.C.

12
13 By: 
14 David E. Kenner,
15 Attorney for Defendant
16 Josef Boehm
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